IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 579 of 2001
Date of Decision: 9.3.2007

Swinder Singh @ Chhinda ...Appellant

Versus

Gurcharan Singh and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Ms. Harpreet Kaur Dhillon, Advocate, for the appellant.
Shri B.R. Mahajan, Advocate, for the respondents.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, arising out of a suit for permanent injunction in respect of 1/5th share of the land measuring 45 kanals 14 marlas.

The plaintiffs have claimed possession of the aforesaid suit land on the basis of mortgage effected by Assa Singh as mortgagee on 7.4.1967. Admittedly, the plaintiff-respondents have purchased 4/5th share of the aforesaid mortgage land in pursuance of the agreement of sale allegedly entered by the legal heirs of Assa Singh in the year 1979.

The defendant-appellant has purchased 1/5th share from Dalbir Singh, one of the legal heirs of Assa Singh vide sale deed dated 24.12.1991 (Exhibit D.1). The present suit for injunction was filed by the plaintiff-respondents on 10.1.1992. The said suit has been decreed by the learned trial Court on the basis of the admission of the defendant that the possession of the suit property is with the plaintiffs. The appeal against the said order was dismissed.

The appellant has relied upon the documents dated 3.5.1996 and 28.5.1996 (Annexures A and B) produced with the memo of appeal along with an application under Order 41 Rule 27 CPC, to contend that the possession of 1/5th share of the land was delivered to the defendant by the revenue authorities in pursuance of the order of partition.

This Court had earlier disposed of the appeal on 15.5.2006 in view of the statement of the learned counsel for the plaintiff-respondents that the order of delivery of possession is subject matter of challenge before the revenue authorities. It was also stated by the learned counsel for the plaintiff-respondents that 1/5th share, which has been allegedly purchased by the defendant, in fact, has been purchased by the respondent-plaintiffs.

Learned counsel for the appellant has pointed out that a suit for specific performance was filed by the plaintiff on 12.12.1992 in respect of the remaining 1/5th share of Assa Singh. The said suit was withdrawn on 13.8.1994. The statement of the plaintiff has been appended as Anenxure-F with the review application and the order as Annexure-G.

In reply, it has been pointed out that in fact, there was a compromise between the parties on 11.6.1994, whereby Dalbir Singh, who had 1/5th share, had agreed to execute a sale deed in favour of the plaintiff and the compromise dated 11.6.1994 was filed before the Civil Court. It was on the basis of the said compromise, a statement was made by the plaintiff to withdraw the suit for specific performance. But the sale deed in pursuance of the aforesaid compromise was not executed, therefore, the plaintiff filed execution of the compromise, in which proceedings, the defendant Dalbir Singh, again made a statement to execute a sale deed of

his 1/5th share. In pursuance of the said statement, a sale deed dated 16.1.1997 was executed by Dalbir Singh in favour of the plaintiffs. It is also pointed out that the said sale deed was challenged by the defendant-appellant in a separate suit bearing Civil Suit No. 165 of 1999. The said Civil Suit has since been decided on 9.11.2006, whereby suit for declaration challenging the sale deed dated 16.1.1997 has been decreed. The defendant-appellant has been found to be owner of the suit land, but it has been found that the plaintiffs are in possession of the land purchased by them. Admittedly, both the parties are in appeal against the aforesaid judgment and decree, which is pending before the competent Court.

Thus, it is apparent that the question of possession is subject matter of challenge in the subsequent suit, which is pending consideration before the learned first Appellate Court. The present appeal arises out of a simplicitor suit for injunction. The appellant claims possession on the basis of orders passed by the revenue authorities. Such orders have been considered by the Court in subsequent suit filed by the appellant. Both the parties are in appeal. Such orders are sought to be produced in additional evidence. Therefore, I do not think it appropriate to admit the said documents as additional evidence in the present proceedings but these documents have already been produced in another suit for declaration.

Therefore, I do not find any ground to interfere in the findings recorded in the present suit for permanent injunction, which may give rise to any substantial question of law in the present appeal.

Hence, the present appeal is dismissed.

9.3.2007 (HEMANT GUPTA)
ds JUDGE